United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

74-1302

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

—against—

CARLOS IVAN SANDOVAL,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANT'S BRIEF

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Question Presented

Whether the Director of the Selective Service System had and exercised authority pursuant to the Military Selective Service Act of 1967, and the Regulations promulgated thereunder, to alter the order of call established under that Act by the President of the United States in 32 C.F.R. §1631.7.

The District Court answered that question affirmatively.

Statement of the Case

The Appellant Carlos Ivan Sandoval duly registered with Selective Service System Local Board No. 51 of Brooklyn,

New York. A4.* After routine processing, which included a physical and mental examination on June 24, 1967, the registrant was found qualified and available for service. A4. On March 11, 1968, he was issued an Order to Report for Induction, directing him to appear for induction on March 26, 1968. A4. That reporting date was subsequently postponed by the Local Board to April 18, 1968. A4, 5. On that date, the registrant did not report for induction. A5. He was indicted for that failure on December 17, 1971, (A5) and, upon trial to the Court, found guilty as charged on October 26, 1973. A12.

In ordering the registrant for induction, the Local Board bypassed 63 registrants who were older than the defendant registrant (A7, 8) and who would normally have preceded him in the order of call as mandated by 32 C.F.R. §1631.7 (1967). The parties stipulated below, and the District Court found, that for the order of call defense to succeed, the defendant would have to show that no fewer than 24 of the 63 bypassed registrants were improperly bypassed, since that was the minimum number of collateral registrants who, had they been called when the defendant was, would have sufficed to push him off the Delivery List for his induction date. A7.

The evidence adduced at trial showed (and the parties are agreed) that 31 registrants of the 63 challenged were not

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*Reference "A__" is to pages of the Appendix filed herewith.

called prior to Mr. Sandoval because they were denominated "New Mental Standards" cases. All, 12, 13. At trial, defendant attacked the existence of the New Mental Standards group as a separate element of the order of call, and argued that the inclusion of these 31 registrants in the order of call in their regulatorily mandated position would have operated to prevent Mr. Sandoval's induction order from issuing when it did, because his name would not have been reached by Local Board No. 51 in filling the call for inductions on March 26, 1968.

Thus, if the New Mental Standards categorization is found to be unauthorized, the registrant is entitled to a judgment of acquittal, having shown that well over 24 registrants who should have preceded him in the order of call were not called by virtue of the unauthorized classification, and that his induction was for that reason accelerated.

Argument

THE ACCELERATION OF THE REGISTRANT'S INDUCTION BY THE ARBITRARY AND UNAUTHORIZED EXCLUSION FROM THE ORDER OF CALL OF A GROUP OF REGISTRANTS DENOMINATED "NEW MENTAL STANDARDS" CASES WAS UNLAWFUL, AND ENTITLES THE REGISTRANT HEREIN TO A JUDGMENT OF ACQUITTAL.

A. The Order of Call in General

It is well established that the timing of the issuance of a registrant's induction notice and the order in which he is called for induction affect his substantial rights. Gutknecht v. United States, 396 U.S. 295, 304 (1970); Breen v. Local Board No. 16, 396 U.S. 460 (1970); United States v. Strayhorn, 471 F.2d 661 (2d Cir. 1972); United States v. Weintraub, 429 F.2d 658 (2d Cir.), cert. den. 400 U.S. 1014 (1971); United States v. Sandbank, 403 F.2d 38 (2d Cir. 1968); Yates v. United States, 404 F.2d 462 (1st Cir. 1968); United States v. Dobie, 444 F.2d 417 (4th Cir. 1971); Greer v. United States, 378 F.2d 931 (5th Cir. 1967); United States v. Dudley, 451 F.2d 1300 (6th Cir. 1971); United States v. Baker, 416 F.2d 202 (9th Cir. 1969); Little v. United States, 409 F.2d 1343 (10th Cir. 1969). A deviation from the order of call mandated by statute and regulation which prejudices an otherwise qualified registrant by causing his induction to be accelerated is a violation of due process of law and vitiates a refusal of induction, and this

is true even if the acceleration advances the registrant's induction be as little as one month. As the Supreme Court explicitly recognized in United States v. Gutknecht, supra at 304, 305:

> Deferment of the order of call may be the bestowal of great benefits; and its acceleration may be extremely punitive.... Congress...was vitally concerned with the order of selection....

The authority for a draft board to issue induction orders is totally dependent upon actions at higher levels of the Selective Service System and in the Department of Defense. The Secretary of Defense must issue to the Director of Selective Service a requisition for a specific number of men to be delivered into the armed forces. 32 C.F.R. §1631.4. The Director of Selective Service then apportions that quota among the several states and transmits to the State Directors the quotas for their respective jurisdictions. 32 C.F.R. §1631.5. Each State Director then allocates his state's quota amont the various local boards by issuing

> ...to each local board concerned a Notice of Call on Local Board (SSS 201) directing the local board to select and deliver for induction...the number of men allocated to the local board.

32 C.F.R. §1631.6.

Only upon receipt of Form 201 does the local board have authority to induct individual registrants, and then it must act directly in accordance with the Notice of Call issued

to it by the State Director.

> When a call is placed without designation of age group or groups, each local board, upon receiving a Notice of Call on Local Board (SSS 201) from the State Director of Selective Service for a specified number of men to be delivered for induction... shall select and order to report for induction the number of men required to fill the call from among its registrants who have been classified in Class 1-A and Class 1-A-0 and who have been found acceptable for service in the Armed Forces and to whom the local board has mailed a Statement of Acceptability (DD Form 62) at least 21 days before the date fixed for induction.

32 C.F.R. §1631.7(a)(1967).

At the time when Mr. Sandoval's induction order was issued (March 11, 1968), the lottery system was not yet in effect. The mandatory order of call was specified by the then current 32 C.F.R. §1631.7 (1967):

[1] delinquents;*

[2] volunteers;

[3] non-volunteers, ages 19-25, oldest first;

[4] non-volunteers, ages 19-25, married before August 25, 1965, oldest first;

[5] non-volunteers, age 26 and up, youngest first;

[6] non-volunteers, ages 18 1/2 to 19, oldest first.

Thus, the order of call is set up entirely by statute

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*Appellant does not contend that any delinquents should have been called before him, nor does he contend that any delinquents should have been counted as meeting the Board's quota, since the delinquency regulations were void. Gutknecht v. United States, supra.

and regulation, and in fact is set up to work mechanically, insulated from uncodified individual judgment and discretion. As this Court stated in United States v. Strayhorn, supra at 662, 663:

> First, the courts have recognized in this and other contexts that the general order of induction has been a matter of some concern to Congress, see Gutknecht v. United States, 396 U.S. 295, 306, 90 S. Ct. 506, 24 L. Ed.2d 532 (1970); Baker, supra, 416 F.2d at 204-205; Dudley, supra, 451 F.2d at 1303, and that the particular rules covering priority represent considered social, economic, and political judgments about who should be called to serve at what time. See Dudley, supra; United States ex rel. Bayly v. Reckord, 51 F. Supp. 507, 515 (D.Md. 1943). Thus, the order of call defense serves to insure that the Selective Service system does not disregard these priorities. But second, and more important, those registrants dealing with the Selective Service, as with any administrative agency, should be able to expect that they will be treated fairly, according to previously established ground rules. See United States v. Griglio, 467 F.2d 572 (1st Cir. 1972), aff'g 334 F. Supp. 1283 (D.Mass. 1971). [Emphasis added].

In the instant case, as will be shown below, the registrant's induction was accelerated by the unauthorized exclusion from the mandated order of call of a large group of registrants not created, defined or recognized by statute or regulation. The effect of this substantial deviation from the law was that a group of men qualified in all ways for induction under the regulations and which should have preceded Mr. Sandoval in the order of call was held out of the order of call, accelerating the registrant's induction without lawful basis of any sort.

B. Regulatory Power Under the Military Selective Service Act of 1967 and Prior Acts

The power to prescribe rules and regulations for the Selective Service System, including with respect to physical, mental and moral standards, is vested by the Military Selective Service Act of 1967 exclusively in the President of the United States. 50 U.S.C.A. App. §§455(a)(1), 456(h)(2), 460(b)(1) [1967]. Nowhere does that act vest in the Director of Selective Service the power to prescribe regulations, nor did its predecessor and successor statutes.

It is, of course, not disputed that the President had the power under §10(c) of the Act [50 U.S.C.A. App. §460(c)] to delegate his regulatory authority, just as he has had the power to do under each of the modern military manpower acts beginning in 1940. Such a delegation, however, has occurred only on rare occasions from 1940 to the present. The first time was in 1940, in Executive Order No. 8545, September 23, 1940, 5 Fed. Reg. 3779, 3781, issued pursuant to the Selective Training and Service Act of 1940, 54 Stat. 894, 50 U.S.C.A. App. §§301 et seq. (1940). In 1943, the President again exercised that power. Executive Order No. 9410, December 23, 1943, 8 Fed. Reg. 17319.

The Selective Training and Service Act of 1940 expired following the Second World War, and in 1947 the Office of Selective Service Records was established, charged in part with the

liquidation of the Selective Service System. 61 Stat. 31, 50 U.S.C.A. App. §§321 et seq. (1947). Involuntary service in the armed forces was not again established until the passage of the Selective Service Act of 1948, 62 Stat. 604, 50 U.S.C.A. App. §§451 et seq. (1948).

Under the 1948 Act, the President received substantially the same grant of authority as is now his under the current act and as was in effect at the time concerning the instant case. Regulation-making was vested in him by §§4(a), 5(a), 5(b), 6(a), 6(h) and 10(b)(1) [50 U.S.C.A. App. §§454(a), 455(a), 455(b), 456(a), 456(h) and 460(b)(1)] in language similar to that of the 1967 Act. The President was also granted power to delegate his authority by §10(c) [50 U.S.C.A. App. §460(c)], but that power was not exercised either under the 1948 as originally passed or as amended at any time through 1967, with the single exception of the grant to the Director of the power to prescribe "housekeeping" regulations concerning internal administrative matters of the Selective Service System. 32 C.F.R. §1604.1.

In 1967, a new statute was passed, the Military Selective Service Act of 1967, 50 U.S.C.A. App. §§451 et seq. (1967). That law, the one governing the instant case, continued substantially unchanged the powers of the President here discussed, including the delegation provision of §10(c), but

that provision again remained unexercised by the President.

When the current Military Selective Service Act was passed on September 29, 1971, [50 U.S.C.A. App. §§451 et seq. (1971)] delegation was again provided for, and for the first time since the early 1940's, the President in fact delegated substantial regulation-making power to the Director of Selective Service. Executive Order No. 11623, October 14, 1971, 36 Fed. Reg. 19963. Since that time, Selective Service regulations have been promulgated by the Director of Selective Service and not by the President.

C. The Order of Call and New Mental Standards

The origins of the New Mental Standards category as a separate manpower pool for induction purposes are not clear. On December 1, 1966, the armed forces lowered the mental standard which prospective inductees would be required to meet by amending ¶4-10 of AR 601-270. As a result of the lowering of the mental standard, many men who had previously been unacceptable for service became acceptable. This new group of potential inductees was referred to by Selective Service personnel as the New Mental Standards group (NMS).

Significantly, the NMS group is not separately mentioned in any regulation* or Local Board Memorandum. Nor, for

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*Compare the specific provision made for men married prior to August 25, 1965, the so-called "Kennedy marrieds." This group was explicitly given a special place in the order of call regulation. See page 6, supra, and Exhibit "A" annexed hereto.

that matter, is the NMS group discussed in AR 601-270. Clearly the President did not create it under his regulation-making power conferred by 50 U.S.C.A. App. §460(b)(1) (1967), and equally clearly, the Director of Selective Service had not the power to put such a regulation change into effect.

The Government argues that the Director was vested under 32 C.F.R. §1632.2(a) with the power to restructure the order of call by postponing the issuance of induction orders to entire classes of registrants, but neither the statute, the regulations, nor the practice of the Selective Service System or the record in this case supports such a reading and usage of that regulation.

32 C.F.R. §1632.2(a) itself clearly speaks in terms of single registrants, not whole classes of men. In all cases, the regulation speaks of the postponement of a single order of induction where the circumstances affecting a particular registrant are brought to the attention of the Director. By no stretch of the imagination can this section be gerrymandered into a general power of the Director of Selective Service to alter and rewrite properly prescribed Presidential regulations.

The Government's proposed construction of 32 C.F.R. §1632.2(a) necessarily leads to the anomalous conclusion that the Director had the power under this section to supercede the deferment regulations promulgated by the President under the

statute, for all the Director would have had to do to obtain that result and to restructure the deferment regulations entirely would have been to postpone indefinitely the issuance of induction orders to a particular class of men. For example, although the President ended the deferment of graduate students in 1967 by amending 32 C.F.R. §1622.25, the Director, according to the Government's construction of 32 C.F.R. §1632.2(a), could have effectively overridden the decision of the President by postponing the issuance of induction orders to all graduate students until they had been awarded their degrees. Such a reading of the regulation is not sustainable in light of Congress' grant of such power to the President and the President's failure to delegate that power until 1971.

The record in this case and the practice of the Selective Service System is inconsistent with the Government's assertion of how the New Mental Standards group came to be favored in the order of call. Under 32 C.F.R. §1632.2(b), a postponement granted pursuant to 32 C.F.R. §1632.2(a) is to be reflected in the registrant's file by the inclusion there of SSS Form 264—Postponement of Induction. Yet in none of the NMS files introduced into evidence at trial is there such a form reflecting an NMS postponement by the Director. The conclusion is inescapable that the forms are not there because there were no postponements under that section.

There is an additional gap in the Government's argu-

ment. Assuming arguendo that the Director had the all-inclusive power to control the order of call and the granting of deferments that the Government urges, there has been no showing at all by the Government that the Director in fact exercised that power, and did so in exactly the way that the Government now urges. The record shows that he did not pass a regulation, nor did he issue a Local Board Memorandum. Indeed, there is no documentary evidence at all of the broad directive from National Headquarters which the Government urges issued at some unspecified time.

With regard to the asserted existence and exercise of the Director's power to create a New Mental Standards grouping of registrants to be excluded from the normal order of call, it cannot be overlooked that in this, as any criminal prosecution, the burden is on the Government to prove this element of its case, as each other element, beyond a reasonable doubt.

At trial, the defendant showed, and the Court found, that 31 registrants denominated New Mental Standards cases were bypassed in the order of call. Each of these men is older than Mr. Sandoval, each was classified in Class 1-A at the pertinent time, and each had been found available for military service by passing physical, mental and moral examinations. Each of these men would ordinarily have preceded Mr. Sandoval in the order of call prescribed by 32 C.F.R.

§1631.7, and, as the trial court found, the existence of 24 or more such men would have caused the order of call defense to succeed. A7.

Thus, at the point when the defendant showed the existence of this large group of registrants, apparently arbitrarily passed over, the defendant's burden of coming forward was satisfied, and the Government's burden of proof beyond a reasonable doubt attached. United States v. Strayhorn, supra; United States v. Weintraub, supra; United States v. Sandbank, supra. The Government then acquired the burden to show beyond a reasonable doubt that the bypassing of these registrants was authorized by the regulations and properly implemented.

The Government's response was to assert without proof the existence of a special subgroup within the prescribed order of call relating to and favoring registrants denominated New Mental Standards. The Government failed to show how this group was created, either by testimonial or documentary evidence, nor did it show any authority for the creation of this group because, as has been shown, no such authority existed save in the President. Thus, the Government did not and could not show beyond a reasonable doubt why such a substantial deviation in the Presidentially prescribed order of call either could or lawfully did exist. It failed to sustain its burden of proof.

This Court did, in passing, refer to the New Mental

Standards group in United States v. Weintraub, supra at 660 n. 2. In that footnote, the Court stated that the NMS subgroup was created by the Director under his postponement power. It is important to recognize, however, that this point was not essential to the Court's decision, which dealt in the main with the question of defense counsel's right to examine the files of collateral registrants. Moreover, the New Mental Standards point was not discussed more than in passing in the briefs submitted to this Court.

The New Mental Standards issue, which was in no way the crux of the Weintraub case, is the fulcrum upon which this case must turn. It is a substantial question, dealing with the essence of the concept of an established and publicly known order of call. As has previously been discussed, the order of call is a subject which has been of much concern to Congress and the courts. This Court itself remarked in United States v. Strayhorn, supra at 662, 663, that the existence of previously established ground rules is crucial to the fair and impartial operation of the Selective Service System, and the importance of this question compels re-examination of the Weintraub footnote.

Conclusion

The defendant below having shown a substantial deviation from the order of call prescribed by the President in 32 C.F.R. §1631.7, the Government has the burden of proof beyond a reasonable doubt to justify that deviation or to explain why it is only an apparent deviation from the clear and unambiguous language of the regulation. It has not sustained that burden. The regulation governing order of call is clear, and it has been massively and intentionally disregarded by the Selective Service System. The procedure for creating special subgroups in the order of call is also clear, as exemplified by the creation of the "Kennedy marrieds" subgroup discussed on page 10. That the President could have created the New Mental Standards subgroup is not disputed, but the fact is that he did not. The Director did not have that power until late 1971, and even if this Court should rule that the inherent power to do so existed in the Director, it cannot find on the record in this case that it was ever exercised. The Government's entire position is this case is an attempt to justify after the fact the illegal actions of the Selective Service System, but, as Judge Frankel observed:

> [Registrants] cannot have their fate governed by an interpretation at which the official authors arrive only following the vicissitudes of liti-

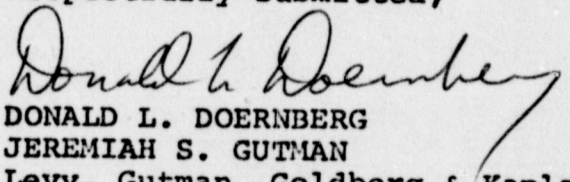
> gation and the second thoughts of counsel who, for all their skill and earnestness, are not after all the agency responsible for promulgation and authoritative construction. Cf. S.E.C. v. Chenery Corp., 319 U.S. 80 (1943).

Moller v. Tarr, 5 S.S.L.R. 3628, 3629, 72 Civ. 2064 (S.D.N.Y. July 6, 1972)(not officially reported). The simple fact is that the New Mental Standards group as a separate part of the order of call does not exist in the law or in the regulations, and induction orders issued on the basis of that unauthorized grouping cannot be sustained by the courts.

The conviction should be reversed.

Dated: New York, New York
April 7, 1974

Respectfully submitted,



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1631.7 Action by Local Board Upon Receipt of Notice of Call.—(a) Each local board, upon receiving a Notice of Call on Local Board (SSS Form 201) from the State Director of Selective Service (1) for a specified number of men to be delivered for induction, or (2) for a specified number of men in a medical, dental, or allied specialist category to be delivered for induction, shall select and order to report for induction the number of men required to fill the call from among its registrants who have been classified in Class I-A and Class I-A-O and have been found acceptable for service in the Armed Forces and to whom the local board has mailed a Statement of Acceptability (DD Form No. 62) at least 21 days before the date fixed for induction: *Provided*, That a registrant classified in Class I-A or Class I-A-O who is a delinquent may be selected and ordered to report for induction to fill an induction call notwithstanding the fact that he has not been found acceptable for service in the Armed Forces and has not been mailed a Statement of Acceptability (DD Form No. 62); *And provided further*, That a registrant classified in Class I-A or Class I-A-O who has volunteered for induction may, if an appeal is not pending in his case and the period during which an appeal may be taken has expired, be selected and ordered to report for induction nothwithstanding the fact that he has not been found acceptable for service in the Armed Forces and regardless of whether or not a Statement of Acceptability (DD Form No. 62) has been mailed to him. Such registrants, including those in a medical, dental, or allied specialist category, shall be selected and ordered to report for induction in the following order:

(1) Delinquents who have attained the age of 19 years in the order of their dates of birth with the oldest being selected first.

(2) Volunteers who have not attained the age of 26 years in the sequence in which they have volunteered for induction.

(3) Nonvolunteers who have attained the age of 19 years and have not attained the age of 26 years and who (A) do not have a wife with whom they maintain a bona fide family relationship in their homes, in the order of their dates of birth with the oldest being selected first, or (B) have a wife whom they married after the effective date (August 26, 1965) of this amended subparagraph and with whom they maintain a bona fide family relationship in their homes, in the order of their dates of birth with the oldest being selected first.

(4) Nonvolunteers who have attained the age of 19 years and have not attained the age of 26 years and who have a wife whom they married on or before the effective date (August 26, 1965) of this amended subparagraph and with whom they maintain a bona fide family relationship in their homes, in the order of their dates of birth with the oldest being selected first.

(5) Nonvolunteers who have attained the age of 26 years

EXHIBIT " A "

in the order of their dates of birth with the youngest being selected first.

(6) Nonvolunteers who have attained the age of 18 years and 6 months and who have not attained the age of 19 years in the order of their dates of birth with the oldest being selected first.

In selecting registrants in the order of their dates of birth, if two or more registrants have the same date of birth they shall, as among themselves, be selected in alphabetical order.

(b) Whenever the number of postponements of induction materially reduces the number of men the local board actually can deliver in response to a call, the local board shall issue orders to report for induction to such numbers of additional men as may be necessary to meet the call, taking into account the number of men to be delivered following the expiration of postponements previously granted.

1631.8 Registrants Who Shall Be Inducted Without Calls.—(a) Notwithstanding any other provision of the regulations in this chapter, any registrant enlisted or appointed after October 4, 1961, in the Ready Reserve of any reserve component of the Armed Forces (other than under section 511(b) of title 10, United States Code), the Army National Guard, or the Air National Guard, prior to attaining the age of 26 years, or any registrant enlisted or appointed in the Army National Guard or the Air National Guard prior to attaining the age of 18 years and 6 months and prior to September 3, 1963, and deferred under the provisions of section 6(c)(2)(A) of the Universal Military Training and Service Act, as amended, which were in effect prior to September 3, 1963, or any registrant enlisted in the Ready Reserve of any reserve component of the Armed Forces prior to attaining the age of 18 years and 6 months and prior to August 1, 1963, and deferred under section 262 of the Armed Forces Reserve Act of 1952, as amended, who fails to serve satisfactorily during his obligated period of service as a member of such Ready Reserve or National Guard or the Ready Reserve of another reserve component or the National Guard of which he becomes a member as certified by the respective armed force, shall be ordered to report for induction by the local board regardless of the class in which he is classified and without changing his classification. Any registrant who is ordered to report for induction under this paragraph shall be forwarded for induction at the next time the local board is forwarding other registrants for induction or at any prior time when special arrangements have been made with the induction station, without any calls being made for the delivery of such registrants. Whenever the local board desires to deliver such a registrant specially, it shall request the State Director of Selective Service to make the special arrangements for the time and place at which the registrant may be delivered for induction.

(b) At the induction station, each registrant who is forwarded for induction under paragraph (a) of this section shall be inducted into the armed force of which the reserve component in which the registrant is a member is a part.

EXHIBIT "A"

PART 1632—DELIVERY AND INDUCTION
GENERAL

1632.1 Order to Report for Induction.—(a) Immediately upon determining which men are to report for induction, the local board shall prepare for each man an Order to Report for Induction (SSS Form 252) in duplicate. The date specified for reporting for induction shall be at least 10 days after the date on which the Order to Report for Induction (SSS Form 252) is mailed, except that a registrant classified in Class I-A or Class I-A-O who has volunteered for induction may be ordered to report for induction on any date after he has so volunteered if an appeal is not pending in his case and the period during which an appeal may be taken has expired. The local board shall mail the original of the Order to Report for Induction (SSS Form 252) to the registrant and shall file the copy in his Cover Sheet (SSS Form 101).

(b) Any registrant who has been issued an Order to Report for Induction (SSS Form 252) and who is distant from his local board of origin, which issued the Order, must report at the time and place specified therein, unless he voluntarily submits to processing for induction at any Armed Forces Examining and Entrance Station and is actually inducted into the Armed Forces or found to be not qualified for induction into the Armed Forces on or before the third day prior to the day that he was required to report in accordance with the Order to Report for Induction (SSS Form 252).

(c) If the registrant is inducted or if the registrant is found not qualified for induction pursuant to paragraph (b) hereof, the Armed Forces Examining and Entrance Station shall inform the local board which issued the Order to Report for Induction (SSS Form 252) of such event, and in either such event the registrant shall not be required to comply with the said Order.

1632.2 Postponement of Induction—General.—(a) In case of death of a member of the registrant's immediate family, extreme emergency involving a member of the registrant's immediate family, serious illness of the registrant, or other extreme emergency beyond the registrant's control, the local board may, after the Order to Report for Induction (SSS Form 252) has been issued, postpone the time when such registrant shall so report for a period not to exceed 60 days from the date of such postponement, subject, however, in case of imperative necessity, to one further postponement for a period not to exceed 60 days; and provided also, that the Director of Selective Service or any State Director of Selective Service (as to registrants registered within his State) may, for a good cause, at any time prior ~~to the issuance of an Order to Report for Induction (SSS Form~~ to the issuance of an Order to Report for Induction (SSS Form 252), postpone the issuance of such order until such time as he may deem advisable, or the Director of Selective Service or any State Director of Selective Service (as to registrants registerd within his State) may, for good cause, at any time after the issuance of an Order

EXHIBIT " B "

to Report for Induction (SSS Form 252), postpone the induction of a registrant until such time as he may deem advisable, and no registrant whose induction has been thus postponed shall be inducted into the armed forces during the period of any postponement.

(b) The local board shall issue to each registrant whose induction is postponed a Postponement of Induction (SSS Form 264), shall mail a copy of such form to the State Director of Selective Service, and shall file a copy in the registrant's Cover Sheet (SSS Form 101). The local board shall note the date of the granting of the postponement and the date of its expiration in the "Remarks" column of the Classification Record (SSS Form 102).

(c) Any period of postponement authorized in paragraph (a) of this section may be terminated before the date of its expiration when the issuing authority so directs and the registrant shall then report for induction at such time and place as may be fixed by the local board.

(d) A postponement of induction shall not render invalid the Order to Report for Induction (SSS Form 252) which has been issued to the registrant but shall operate only to postpone the reporting date and the registrant shall report on the new date without having issued to him a new Order to Report for Induction (SSS Form 252).

1632.5 Preparing Records for a Group Ordered to Report for Induction.—As soon as the local board has mailed an Order to Report for Induction (SSS Form 252) to all registrants who are directed to report for induction at a particular time and place, it shall:

(1) Prepare in quintuplicate a Delivery List (SSS Form 261) completing thereon the entries in columns (1) and (2) for each such registrant.

(2) Assemble the original and three copies of each registrant's Record of Induction (DD Form 47), the original and the copy of the Report of Medical Examination (Standard Form 88), two copies of the Report of Medical History (Standard Form 89), any X-ray films made at the time of the armed forces physical examination, any waiver of disqualification, any order terminating civil custody, all other information concerning the qualification of the registrant for service in the Armed Forces, and, if the registrant has volunteered for induction and has not attained the age of 18 years and 6 months, one copy of the Application for Voluntary Induction (SSS Form 254).

TRANSFER FOR INDUCTION

1632.9 Certain Registrants May Request Transfer for Induction.—Rescinded.

EXHIBIT " B "

PART 1604—SELECTIVE SERVICE OFFICERS NATIONAL ADMINISTRATION

1604.1 Director of Selective Service.—The Director of Selective Service shall be responsible directly to the President. The Director of Selective Service is hereby authorized and directed:

(a) To prescribe such rules and regulations as he shall deem necessary for the administration of the Selective Service System, the conduct of its officers and employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.

(b) To issue such public notices, orders, and instructions as shall be necessary for carrying out the functions of the Selective Service System.

(c) To obligate and authorize expenditures from funds appropriated for carrying out the functions of the Selective Service System.

(d) To appoint, and to fix, in accordance with the Classification Act of 1949, as amended, so far as applicable, the compensation of, such officers, agents, and employees as shall be necessary for carrying out the functions of the Selective Service System.

(e) To procure such space as he may deem necessary for carrying out the functions of the Selective Service System by lease pursuant to existing statutes except that the provisions of the act of June 30, 1932 (47 Stat. 412), as amended by section 15 of the act of March 3, 1933 (47 Stat. 1517; 40 U. S. C. 278a), shall not apply to any lease so entered into.

(f) To perform such other duties as shall be required of him under the selective service law or which may be delegated to him by the President.

(g) To delegate any of his authority to such officers, agents, or persons as he may designate, and to provide for the subdelegation of any such authority.

(h) To purchase such printing, binding, and blankbook work from public, commercial, or private printing establishments or binderies upon orders placed by the Public Printer or upon waivers issued in accordance with section 12 of the Printing Act approved January 12, 1895, as amended, and to obtain by purchase, loan, or gift such equipment and supplies for the Selective Service System, as he may deem necessary to carry out the functions of the Selective Service System, with or without advertising or formal contract.

1604.6 National Selective Service Appeal Board.—(a) There is hereby created and established within the Selective Service System a civilian agency of appeal which shall be known as the National Selective Service Appeal Board, hereafter in this section referred to as the National Board. The National Board shall consist of three members who shall be appointed by the President from among citizens of the United States who are not members of the armed forces, one of whom shall be designated by the President as the chairman.

EXHIBIT " C "

By virtue of the authority vested in me by the Constitution and statutes of the United States, including the Military Selective Service Act, as amended (50 U.S. Code App., sections 451 *et seq.*, hereinafter referred to as the Act), and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. The Director of Selective Service (hereinafter referred to as the Director) is authorized to prescribe the necessary rules and regulations to carry out the provisions of the Act. Regulations heretofore issued by the President to carry out such provisions shall continue in effect until amended or revoked by the Director pursuant to the authority conferred by this Order.

SEC. 2. (a) In carrying out the provisions of this Order, the Director shall cause any rule or regulation which he proposes to issue hereunder to be published in the FEDERAL REGISTER as required by section 13(b) of the Act. Prior to such publication, the Director shall request the views of the Secretary of Defense, the Attorney General, the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Secretary of Transportation (when the Coast Guard is serving under the Department of Transportation), the Director of the Office of Emergency Preparedness, and the Chairman of the National Selective Service Appeal Board with regard to such proposed rule or regulation, and shall allow not less than 10 days for the submission of such views before publication of the proposed rule or regulation.

(b) Any proposed rule or regulation as published by the Director shall be furnished to the officials required to be consulted pursuant to subsection (a). The Director may (not less than 30 days after publication in the FEDERAL REGISTER) issue such rule or regulation as published unless, within 10 days after being furnished with the proposed rule or regulation as published, any such official shall notify the Director that he disagrees therewith and requests that the matter be referred to the President for decision.

(c) Any rule or regulation issued by the Director pursuant to this Order shall be published in the FEDERAL REGISTER with (1) a statement reciting compliance with the prepublication requirement of section 13(b) of the Act, and (2) either (i) approval of such rule or regulation by the President, or (ii) a certification of the Director that he has requested the views of the officials required to be consulted pursuant to subsection (a) and that none of them has timely requested that the matter be referred to the President for decision. Such rule or regulation shall be effective upon such publication in the FEDERAL REGISTER or on such later date as may be specified therein.

SEC. 3. Nothing in this Order shall be deemed to (i) authorize the exercise by the Director of the President's authority to waive the requirements of section 13(b) of the Act, or (ii) derogate from the authority of the President himself to waive the requirements of such section 13(b), or (iii) derogate from the authority of the President himself to issue such rules or regulations as he may deem necessary to carry out the provisions of the Act.

Richard Nixon

THE WHITE HOUSE,
October 12, 1971.

EXHIBIT "D"

[FR Doc.71-15111 Filed 10-13-71;10:00 am]
FEDERAL REGISTER, VOL. 36, NO. 199—THURSDAY, OCTOBER 14, 1971

C E R T I F I C A T E O F S E R V I C E

The undersigned, a member of the bar of this Court, hereby certifies that on the 12th day of April, 1974, he served two copies of the within appellant's brief upon Thomas R. Maher, Esquire, Assistant United States Attorney, by proper mail service.

Dated: New York, New York
April 12, 1974

Donald L. Doernberg

DONALD L. DOERNBERG